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10 BIOFOURMIS INC.; BIOFOURMIS CARE
11 FL PLLC; and BIOFOURMIS CARE NJ LLC

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 CARENODES, LLC, a California
15 limited liability company,

16 Plaintiff,

17 v.

18 BIOFOURMIS INC., a Massachusetts
19 Corporation; BIOFOURMIS CARE FL
20 PLLC, a Florida professional limited
21 liability company; BIOFOURMIS
22 CARE NJ LLC, a New Jersey limited
23 liability company,

24 Defendants.

25 BIOFOURMIS, INC., a Delaware
26 Corporation,

27 Counterclaimant,

28 v.

CARENODES, LLC, a California limited
liability company,

Counterdefendant.

Case No. 2:24-cv-10411-JC

**DEFENDANTS' ANSWER AND
COUNTERCLAIM**

DEMAND FOR JURY TRIAL

Action filed: December 3, 2024

1 Defendants Biofourmis Inc. (“Biofourmis”), Biofourmis Care FL PLLC, and
2 Biofourmis Care NJ LLC (collectively “Defendants”), by and through their attorneys
3 of record, hereby answers Plaintiff’s Complaint filed by Plaintiff Carenodes, LLC
4 (“Plaintiff” or “Carenodes”).

5 **ANSWER**

6 **INTRODUCTION**

7 1. Defendants deny the allegations set forth in Paragraph 1.

8 2. Paragraph 2 of the Complaint does not contain allegations of fact
9 directed at the defendants to which an admission or denial is required.

10 3. To the extent paragraph 3 of the Complaint refers to a document, the
11 document speaks for itself. Biofourmis admits that it entered into a written agreement
12 with Carenodes beginning in April 2021.

13 4. To the extent paragraph 4 of the Complaint refers to a document, the
14 document speaks for itself. Biofourmis denies all remaining allegations of
15 Paragraph 4.

16 5. Biofourmis admits that it sent a December 7, 2022 notice to Carenodes
17 notifying Carenodes that it was in material breach of the parties’ agreements. That
18 document speaks for itself. Biofourmis denies all remaining allegations of
19 Paragraph 5.

20 6. Biofourmis lacks sufficient knowledge or information to form a
21 belief as to the truth of the allegations of Carenodes’ suspicions or investigation and
22 therefore denies them. Biofourmis denies all remaining allegations of Paragraph 6.

23 7. Defendants deny the allegations set forth in Paragraph 7.

24 **JURISDICTION AND VENUE**

25 8. Paragraph 8(a) does not contain allegations of fact directed at the
26 defendants to which an admission or denial is required. Defendants deny the
27 allegations of subparagraphs (b), (c), and (d).

28 9. Defendants admit.

10. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 10 and on that basis denies them.

THE PARTIES

11. Paragraph 11 does not contain allegations of fact directed at the defendants to which an admission or denial is required.

12. Defendants deny the allegations of Paragraph 12.

13. Defendants deny the allegations of Paragraph 13.

14. Defendants deny the allegations of Paragraph 14.

15. Defendants deny the allegations of Paragraph 15.

16. The allegations in paragraph 16 of the Complaint set forth a legal conclusion to which no response is required.

17. The allegations in paragraph 17 of the Complaint set forth a legal conclusion to which no response is required.

18. The allegations in paragraph 18 of the Complaint set forth a legal conclusion to which no response is required.

19. Defendants deny the allegations of paragraph 19.

20. Defendants deny the allegations of paragraph 20.

21. The allegations in paragraph 21 of the Complaint set forth a legal conclusion to which no response is required. To the extent any response is required, defendants deny the allegations.

FACTUAL ALLEGATIONS

22. Paragraph 22 does not contain allegations of fact directed at the defendants to which an admission or denial is required.

23. Paragraph 23 does not contain allegations of fact directed at the defendants to which an admission or denial is required.

24. Paragraph 24 does not contain allegations of fact directed at the defendants to which an admission or denial is required.

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1 25. Paragraph 25 does not contain allegations of fact directed at the
2 defendants to which an admission or denial is required.

3 26. Paragraph 26 does not contain allegations of fact directed at the
4 defendants to which an admission or denial is required.

5 27. Paragraph 27 does not contain allegations of fact directed at the
6 defendants to which an admission or denial is required. To the extent any response is
7 required, Defendants deny the allegations of Paragraph 27.

8 28. Defendants deny that the allegations of Paragraph 28 accurately
9 describes Biofourmis' "focus" or business activities.

10 29. Defendants deny that the allegations of Paragraph 29 accurately
11 describes Biofourmis' business activities. Defendants admit that a small number of
12 Biofourmis' clients use clinical services.

13 30. To the extent that Paragraph 30 refers to a document, the document
14 speaks for itself. Biofourmis admits that it entered into an agreement with Carenodes
15 to provide administrative functions in more than one state. Defendants deny the
16 remaining allegations of Paragraph 30.

17 31. Biofourmis admits that it is required to register an entity in each state in
18 which that state's laws require it to do so as part of its business activities. Defendants
19 deny the remaining allegations of Paragraph 31.

20 32. Defendants admit that Biofourmis registered Bifourmis Care NJ LLC as
21 a limited liability company in the state of New Jersey. Defendants deny any
22 remaining allegations of Paragraph 32.

23 33. Defendants admit that Biofourmis registered Bifourmis Care FL PLLC
24 as a professional limited liability company in the state of Florida and that Biofourmis
25 Care FL PLLC is or has been registered in the states listed in Paragraph 33.

26 34. Defendants admit.

27 35. To the extent that Paragraph 35 refers to a document, the document
28 speaks for itself. Defendants deny all remaining allegations of Paragraph 35.

1 36. Defendants admit.

2 37. To the extent that Paragraph 37 refers to a document, the document
3 speaks for itself. Defendants deny all remaining allegations of Paragraph 37.

4 38. To the extent that Paragraph 38 refers to a document, the document
5 speaks for itself. Defendants deny all remaining allegations of Paragraph 38.

6 39. To the extent that Paragraph 39 refers to a document, the document
7 speaks for itself. Defendants deny all remaining allegations of Paragraph 39.

8 40. To the extent that Paragraph 40 refers to a document, the document
9 speaks for itself. Defendants deny all remaining allegations of Paragraph 40.

10 41. To the extent that Paragraph 41 refers to a document, the document
11 speaks for itself. Defendants deny all remaining allegations of Paragraph 41.

12 42. To the extent that Paragraph 42 refers to a document, the document
13 speaks for itself. Defendants deny all remaining allegations of Paragraph 42.

14 43. To the extent that Paragraph 43 refers to a document, the document
15 speaks for itself. Defendants deny all remaining allegations of Paragraph 43.

16 44. To the extent that Paragraph 44 refers to a document, the document
17 speaks for itself. Defendants deny all remaining allegations of Paragraph 44.

18 45. To the extent that Paragraph 45 refers to a document, the document
19 speaks for itself. Defendants deny all remaining allegations of Paragraph 45.

20 46. To the extent that Paragraph 46 refers to a document, the document
21 speaks for itself. Defendants deny all remaining allegations of Paragraph 46.

22 47. To the extent that Paragraph 47 refers to a document, the document
23 speaks for itself. Defendants deny all remaining allegations of Paragraph 47.

24 48. To the extent that Paragraph 48 refers to a document, the document
25 speaks for itself. Defendants deny all remaining allegations of Paragraph 48.

26 49. To the extent that Paragraph 49 refers to Carenodes' activities,
27 Defendants lack sufficient knowledge or information to form a belief as to the truth
28 of those allegations and therefore deny them. To the extent that Paragraph 49 refers

1 to a document, the document speaks for itself. Defendants deny all remaining
2 allegations of Paragraph 49.

3 50. To the extent that Paragraph 50 refers to a document, the document
4 speaks for itself. Defendants deny all remaining allegations of Paragraph 50.

5 51. To the extent that Paragraph 51 refers to a document, the document
6 speaks for itself. Defendants deny all remaining allegations of Paragraph 51.

7 52. Defendants admit that no written amendment to the agreement was
8 executed. As to the remaining allegations of Paragraph 52, Defendants lack sufficient
9 knowledge or information to form a belief as to the truth of those allegations, and
10 therefore deny them.

11 53. Defendants deny the allegations of Paragraph 53.

12 54. Defendants admit that Biofourmis registered Biofourmis Care FL PLLC
13 to do business in Texas, Pennsylvania, and Maryland. As to the remaining allegations
14 of Paragraph 54, Defendants lack sufficient knowledge or information to form a
15 belief as to the truth of those allegations, and therefore deny them.

16 55. To the extent Paragraph 55's allegations refer to Carenodes' "invoicing
17 system," Defendants lack sufficient knowledge or information to form a belief as to
18 the truth of Paragraph 55's allegations, and therefore deny them. Defendants deny all
19 remaining allegations of Paragraph 55.

20 56. Defendants deny the allegations of Paragraph 56.

21 57. Defendants lack sufficient knowledge or information to form a belief as
22 to the truth of Paragraph 57's allegations, and therefore deny them.

23 58. Defendants admit that on December 7, 2022, Biofourmis sent Carenodes
24 a letter notifying Carenodes of its material breaches of the Agreements. Defendants
25 deny any remaining allegations in Paragraph 58.

26 59. To the extent that Paragraph 59 refers to a document, the document
27 speaks for itself. Defendants deny all remaining allegations of Paragraph 59.

28 60. To the extent that Paragraph 60 refers to a document, the document

1 speaks for itself. Defendants deny all remaining allegations of Paragraph 60.

2 61. To the extent that Paragraph 61 refers to a document, the document
3 speaks for itself. Defendants deny all remaining allegations of Paragraph 61.

4 62. To the extent that Paragraph 62 refers to a document, the document
5 speaks for itself. Defendants deny all remaining allegations of Paragraph 62.

6 63. Defendants deny the allegations of Paragraph 63.

7 64. Paragraph 64 does not contain allegations of fact directed at the
8 defendants to which an admission or denial is required.

9 65. To the extent that the allegations of Paragraph 65 refer to documents,
10 those documents speak for themselves. Defendants lack sufficient knowledge or
11 information to form a belief as to the truth of the allegations as to Carenodes' conduct
12 or feelings and on that basis deny those allegations. The allegations of Paragraph of
13 65 are vague and unclear as to the meaning of "listed" and so Defendants are unable
14 to admit or deny those allegations of Paragraph 65 and on that basis deny those
15 allegations.

16 66. To the extent that Paragraph 66 refers to a document, the document
17 speaks for itself. Defendants deny all remaining allegations of Paragraph 66.

18 67. Defendants lack sufficient knowledge or information to form a belief
19 as to the truth of Paragraph 67's allegations, and therefore deny them.

20 68. To the extent that Paragraph 68 refers to a document, the document
21 speaks for itself. Defendants deny all remaining allegations of Paragraph 68.

22 69. To the extent that Paragraph 69 refers to documents, the documents
23 speak for themselves. Defendants deny all remaining allegations of Paragraph 69.

24 70. To the extent that Paragraph 70 refers to a document, the document
25 speaks for itself. Defendants deny all remaining allegations of Paragraph 70.

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CAUSES OF ACTION

FIRST CAUSE OF ACTION

Breach of Written Contract

(Against Biofourmis)

71. Defendants repeat their responses to Paragraphs 1 through 70 of the Complaint as if fully set forth here.

72. Defendants admit.

73. To the extent that Paragraph 73 refers to documents, the documents speak for themselves. Defendants deny any remaining allegations of Paragraph 73.

74. Defendants deny the allegations of Paragraph 74.

75. To the extent that Paragraph 75 refers to a document, the document speaks for itself. Defendants deny any remaining allegations of Paragraph 75.

76. The allegations in Paragraph 76 set forth a legal conclusion to which no response is required. Biofourmis denies the allegations in Paragraph 76.

77. The allegations in Paragraph 77 set forth a legal conclusion to which no response is required. Biofourmis denies the allegations in Paragraph 77.

78. To the extent that Paragraph 78 refers to documents, the documents speak for themselves. The allegations in Paragraph 78 set forth a legal conclusion to which no response is required. Biofourmis denies the allegations in Paragraph 78.

79. The allegations in Paragraph 79 set forth a legal conclusion to which no response is required. Biofourmis denies the allegations in Paragraph 79.

SECOND CAUSE OF ACTION

Breach of Oral Contract

(Against Biofourmis)

80. Defendants repeat their responses to Paragraphs 1 through 79 of the Complaint as if fully set forth here.

81. Defendants admit.

82. To the extent that Paragraph 82 refers to documents, the documents

1 speak for themselves. The allegations in Paragraph 82 set forth a legal conclusion to
2 which no response is required.

3 83. Defendants deny the allegations of Paragraph 83.

4 84. To the extent that Paragraph 84 refers to a document, the document
5 speaks for itself. Defendants deny any remaining allegations of Paragraph 84.

6 85. The allegations in Paragraph 85 set forth a legal conclusion to which no
7 response is required. Biofourmis denies the allegations in Paragraph 85.

8 86. The allegations in Paragraph 86 set forth a legal conclusion to which no
9 response is required. Biofourmis denies the allegations in Paragraph 86.

10 87. The allegations in Paragraph 87 set forth a legal conclusion to which no
11 response is required. Biofourmis denies the allegations in Paragraph 87.

12 88. Defendants deny the allegations in Paragraph 88.

13 **THIRD CAUSE OF ACTION**

14 **Breach of Implied-in-Fact Contract**

15 **(Against All Defendants)**

16 89. Defendants repeat their responses to Paragraphs 1 through 88 of the
17 Complaint as if fully set forth here.

18 90. The allegations in Paragraph 90 set forth a legal conclusion to which no
19 response is required. Defendants deny the allegations in Paragraph 90.

20 91. Defendants admit.

21 92. To the extent that Paragraph 92 refers to documents, the documents
22 speak for themselves. The allegations in Paragraph 92 set forth a legal conclusion to
23 which no response is required.

24 93. Defendants deny the allegations of Paragraph 93.

25 94. To the extent that Paragraph 94 refers to a document, the document
26 speaks for itself. Defendants deny any remaining allegations of Paragraph 94.

27 95. The allegations in Paragraph 95 set forth a legal conclusion to which no
28 response is required. Biofourmis denies the allegations in Paragraph 95.

96. The allegations in Paragraph 96 set forth a legal conclusion to which no response is required. Biofourmis denies the allegations in Paragraph 96.

97. The allegations in Paragraph 97 set forth a legal conclusion to which no response is required. Biofourmis denies the allegations in Paragraph 97.

98. Defendants deny the allegations in Paragraph 98.

FOURTH CAUSE OF ACTION

Breach of the Implied Covenant of Good Faith and Fair Dealings [*sic*]

(Against All Defendants)

99. Defendants repeat their responses to Paragraphs 1 through 98 of the Complaint as if fully set forth here.

100. The allegations in Paragraph 100 set forth a legal conclusion to which no response is required. Defendants deny the allegations in Paragraph 100.

101. Defendants deny the allegations in Paragraph 101.

102. Defendants deny the allegations in Paragraph 102.

103. Defendants deny the allegations of Paragraph 103.

104. To the extent that Paragraph 104 refers to documents, the documents speak for themselves. Defendants deny any remaining allegations of Paragraph 104.

105. The allegations in Paragraph 105 set forth a legal conclusion to which no response is required. Biofourmis denies the allegations in Paragraph 105.

106. Defendants deny the allegations in Paragraph 106.

FIFTH CAUSE OF ACTION

Unjust Enrichment / Restitution

(Against All Defendants)

107. Defendants repeat their responses to Paragraphs 1 through 106 of the Complaint as if fully set forth here.

108. Paragraph 108 does not contain allegations of fact directed to Defendants to which an admission or denial is required.

109. To the extent that Paragraph 109 refers to documents, the documents

1 speak for themselves. Defendants deny any remaining allegations of Paragraph 109.

2 110. The allegations in Paragraph 110 set forth a legal conclusion to which
3 no response is required. Defendants deny the allegations in Paragraph 110.

4 111. Defendants deny the allegations of Paragraph 111.

5 112. Defendants deny the allegations of Paragraph 112.

6 113. Defendants deny the allegations of Paragraph 113.

7 114. The allegations in Paragraph 114 set forth a legal conclusion to which
8 no response is required. Biofourmis denies the allegations in Paragraph 114.

9 115. The allegations in Paragraph 115 set forth a legal conclusion to which
10 no response is required. Biofourmis denies any remaining allegations in
11 Paragraph 115.

12 **SIXTH CAUSE OF ACTION**

13 **Promissory Estoppel**

14 **(Against the LLCs)**

15 116. Defendants repeat their responses to Paragraphs 1 through 115 of the
16 Complaint as if fully set forth here.

17 117. Paragraph 117 does not contain allegations of fact directed to
18 Defendants to which an admission or denial is required.

19 118. To the extent that Paragraph 118 refers to documents, the documents
20 speak for themselves. Defendants deny any remaining allegations of Paragraph 118.

21 119. To the extent that Paragraph 119 refers to documents, the documents
22 speak for themselves. Defendants deny any remaining allegations of Paragraph 119.

23 120. To the extent that Paragraph 120 refers to documents, the documents
24 speak for themselves. Defendants deny any remaining allegations of Paragraph 120.

25 121. Defendants deny the allegations of Paragraph 121.

26 122. Defendants deny the allegations of Paragraph 122.

27 123. The allegations in Paragraph 123 set forth a legal conclusion to which
28 no response is required. Biofourmis denies the allegations in Paragraph 123.

1 124. Paragraph 124 does not contain allegations of fact directed to
2 Defendants to which an admission or denial is required. The allegations in Paragraph
3 124 set forth a legal conclusion to which no response is required. Defendants deny
4 any remaining allegations in Paragraph 124.

5 125. Paragraph 125 does not contain allegations of fact directed to
6 Defendants to which an admission or denial is required. Defendants deny any
7 remaining allegations in Paragraph 125.

8 126. Defendants deny the allegations of Paragraph 126.

9 127. The allegations in Paragraph 127 set forth a legal conclusion to which
10 no response is required. Defendants deny any remaining allegations in
11 Paragraph 127.

12 128. Defendants deny the allegations of Paragraph 128.

13 **SEVENTH CAUSE OF ACTION**

14 **Intentional Misrepresentation (Fraud)**

15 **(Against All Defendants)**

16 129. Defendants repeat their responses to Paragraphs 1 through 128 of the
17 Complaint as if fully set forth here.

18 130. Defendants admit.

19 131. The allegations in Paragraph 131 set forth a legal conclusion to which
20 no response is required. Defendants deny any remaining allegations in
21 Paragraph 131.

22 132. Defendants admit.

23 133. To the extent that Paragraph 133 refers to documents, the documents
24 speak for themselves. Defendants lack sufficient knowledge or information to form
25 a belief as to the vague remaining allegations of Paragraph 133 and on that basis deny
26 them.

27 134. Defendants deny the allegations of Paragraph 134.

28 135. This paragraph repeats Paragraph 134. Defendants deny the allegations.

1 136. Defendants deny the allegations of Paragraph 136.

2 137. Defendants deny the allegations of Paragraph 137.

3 138. The allegations in Paragraph 138 set forth a legal conclusion to which
4 no response is required. Defendants deny any remaining allegations in
5 Paragraph 138.

6 139. Defendants deny the allegations of Paragraph 139.

7 140. The allegations in Paragraph 140 set forth a legal conclusion to which
8 no response is required. Defendants deny any remaining allegations in
9 Paragraph 140.

10 **EIGHTH CAUSE OF ACTION**

11 **Negligent Misrepresentation**

12 **(Against All Defendants)**

13 141. Defendants repeat their responses to Paragraphs 1 through 140 of the
14 Complaint as if fully set forth here.

15 142. Defendants admit.

16 143. The allegations in Paragraph 143 set forth a legal conclusion to which
17 no response is required. Defendants deny any remaining allegations in
18 Paragraph 143.

19 144. Defendants admit.

20 145. The allegations in Paragraph 145 set forth a legal conclusion to which
21 no response is required. Defendants deny any remaining allegations in
22 Paragraph 145.

23 146. To the extent that Paragraph 146 refers to documents, the documents
24 speak for themselves. Defendants lack sufficient knowledge or information to form
25 a belief as to the vague remaining allegations of Paragraph 146 and on that basis deny
26 them.

27 147. Defendants deny the allegations of Paragraph 147.

28 148. Defendants deny the allegations of Paragraph 148.

1 149. Defendants deny the allegations of Paragraph 149.

2 150. Defendants deny the allegations of Paragraph 150.

3 151. The allegations in Paragraph 151 set forth a legal conclusion to which
4 no response is required. Defendants deny any remaining allegations in
5 Paragraph 151.

6 152. Defendants deny the allegations of Paragraph 152.

7 153. The allegations in Paragraph 153 set forth a legal conclusion to which
8 no response is required. Defendants deny any remaining allegations in
9 Paragraph 153.

10 **NINTH CAUSE OF ACTION**

11 **Unfair Competition under**

12 **California Business & Professions Code § 17200, et seq.**

13 **(Against all Defendants)**

14 154. Defendants repeat their responses to Paragraphs 1 through 153 of the
15 Complaint as if fully set forth here.

16 155. Defendants admit.

17 156. The allegations in Paragraph 156 set forth a legal conclusion to which
18 no response is required. Defendants deny any remaining allegations in
19 Paragraph 156.

20 157. Defendants admit.

21 158. To the extent that Paragraph 158 refers to documents, the documents
22 speak for themselves. Defendants lack sufficient knowledge or information to form
23 a belief as to the vague remaining allegations of Paragraph 158 and on that basis deny
24 them.

25 159. Defendants deny the allegations of Paragraph 159.

26 160. Defendants deny the allegations of Paragraph 160.

27 161. Defendants deny the allegations of Paragraph 161.

28 162. The allegations in Paragraph 162 set forth a legal conclusion to which

1 no response is required. Defendants deny any remaining allegations in
2 Paragraph 162.

3 163. The allegations in Paragraph 163 and its subparagraphs set forth legal
4 conclusions to which no response is required. Defendants deny any remaining
5 allegations in Paragraph 163.

6 164. The allegations in Paragraph 164 set forth a legal conclusion to which
7 no response is required. Defendants deny any remaining allegations in
8 Paragraph 164.

9 165. The allegations in Paragraph 165 set forth a legal conclusion to which
10 no response is required. Defendants deny any remaining allegations in
11 Paragraph 165.

12 **TENTH CAUSE OF ACTION**

13 **Accounting**

14 **(Against All Defendants)**

15 166. Defendants repeat their responses to Paragraphs 1 through 165 of the
16 Complaint as if fully set forth here.

17 167. The allegations in Paragraph 167 set forth a legal conclusion to which
18 no response is required.

19 168. The allegations in Paragraph 168 set forth legal conclusions to which no
20 response is required. Defendants deny any remaining allegations in Paragraph 168.

21 169. The allegations in Paragraph 169 set forth legal conclusions to which no
22 response is required. Defendants deny any remaining allegations in Paragraph 169.

23 170. Defendants deny the allegations of Paragraph 170.

24 171. Paragraph 171 does not contain allegations of fact directed to
25 Defendants to which an admission or denial is required.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Defendants deny that Plaintiff is entitled to any relief it
3 requests in its prayer for relief and that Plaintiff is liable for any of the alleged
4 violations listed in the Complaint. Defendants respectfully request judgment in their
5 favor and against Plaintiff on all of the causes of action alleged in the Complaint, for
6 an award of attorneys' fees and costs, and for such other and further relief as the
7 Court deems just and proper.

8 **DEFENDANTS' AFFIRMATIVE DEFENSES**

9 **FIRST AFFIRMATIVE DEFENSE**

10 The Complaint fails to state a claim for which relief can be granted.

11 **SECOND AFFIRMATIVE DEFENSE**

12 Plaintiff has failed to perform all conditions, covenants and promises required
13 by it to be performed in accordance with the terms and conditions of the written
14 contracts.

15 **THIRD AFFIRMATIVE DEFENSE**

16 Plaintiff's claims are barred, in whole or in part, by a failure and/or lack of
17 consideration, and no cause of action is stated.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 Plaintiff's claims are barred, in whole or in part, because Defendants have fully
20 performed the conditions and covenants required to be performed by it unless and
21 until prevented from doing so by Plaintiff.

22 **FIFTH AFFIRMATIVE DEFENSE**

23 Plaintiff's claims are barred, in whole or in part, because a condition precedent
24 to Defendant's duty to perform has not yet occurred, namely Plaintiff's failure to
25 perform.

26 **SIXTH AFFIRMATIVE DEFENSE**

27 Plaintiff's claims are barred, in whole or in part, by the doctrines of estoppel,
28 unclean hands, and waiver.

1 SEVENTH AFFIRMATIVE DEFENSE

2 Plaintiff's claims are barred, in whole or in part, because Plaintiff would be
3 unjustly enriched if it prevailed on the Complaint.

4 EIGHTH AFFIRMATIVE DEFENSE

5 Plaintiff's claims are barred, in whole or in part, because Defendants have
6 substantially complied with their obligations under the law given the lack of
7 performance by Plaintiff.

8 NINTH AFFIRMATIVE DEFENSE

9 Plaintiff's claims are barred, in whole or in part, because if Plaintiff is entitled
10 to any compensation, which Defendants expressly denies, such compensation is
11 reflective only of the value of services actually performed.

12 TENTH AFFIRMATIVE DEFENSE

13 Plaintiff's claims are barred, in whole or in part, because Plaintiff failed to
14 deliver the performance that served as consideration for the agreement.

15 ELEVENTH AFFIRMATIVE DEFENSE

16 Plaintiff's claims are barred, in whole or in part, because one or more of the
17 alleged contracts lacked consideration and are thus unenforceable.

18 TWELFTH AFFIRMATIVE DEFENSE

19 Plaintiff's claims are barred, in whole or in part, because Defendants acted
20 reasonably and in good faith in their dealings with Plaintiff, based on all relevant
21 facts and circumstances known by them at the times that they acted.

22 THIRTEENTH AFFIRMATIVE DEFENSE

23 Plaintiff's claims are barred, in whole and in part, because Plaintiff's
24 omissions, conduct, and voluntary acts proximately caused, or otherwise contributed
25 to, the matters of which it complains.

26 FOURTEENTH AFFIRMATIVE DEFENSE

27 Plaintiff's claims are barred, in whole and in part, because Plaintiff has failed
28 to mitigate damages regarding the matters of which it complains.

1 **RESERVATION OF RIGHTS AND DEFENSES**

2 Defendants reserve the right to raise additional defenses as they becomes
3 aware of them.

4 **COUNTERCLAIM**

5 Pursuant to Rule 13, Federal Rules of Civil Procedure, Defendant Biofourmis,
6 Inc. (“Biofourmis”) counterclaims against Carenodes, LLC (“Carenodes”) as
7 follows:

8 **THE PARTIES**

9 1. Biofourmis is a Delaware corporation with its principal place of
10 business in Needham, Massachussetts.

11 2. On information and belief, Carenodes is a California limited liability
12 company, with its principal place of business in Los Angeles, California.

13 **JURISDICTION AND VENUE**

14 3. This Court has subject matter jurisdiction over these counterclaims
15 pursuant to 28 U.S.C. § 1332.

16 4. This Court has personal jurisdiction over Carenodes because, on
17 information and belief, Carenodes and its owner are located in the State of California.
18 In addition, this Court has personal jurisdiction over Carenodes because it sued
19 Biofourmis in this lawsuit.

20 5. Venue in this district is proper pursuant to 28 U.S.C. § 1391.

21 **FACTUAL ALLEGATIONS**

22 6. On or about April 13, 2022, Biofourmis and Carenodes entered into a
23 written contract entitled “Master Services Agreement” (hereinafter “MSA”) whereby
24 Carenodes agreed to provide services to Biofourmis directly or through
25 subcontractors. A true and correct copy of the MSA was attached as Exhibit A to
26 Carenodes’ Complaint in this litigation and is incorporated hereto as if fully set forth
27 herein.

28 7. Less than a month later, on or about May 4, 2022, Biofourmis and

1 Carenodes entered into a further agreement entitled “Amendment 1” to the MSA,
2 whereby Carenodes promised to provide certain Services to Biofourmis relating to
3 the States of California, Colorado, New Jersey, and Ohio. A true and correct copy of
4 Amendment 1 was attached as Exhibit C to Carenodes’ Complaint in this litigation
5 and is incorporated hereto as if fully set forth herein.

6 8. Shortly thereafter, on May 18, 2021, Biofourmis and Carenodes entered
7 into a Statement of Work (“SOW”) whereby Carenodes promised to provide certain
8 Services to Biofourmis in the State of New York. A true and correct copy of the SOW
9 was attached as Exhibit B to Carenodes’ Complaint in this litigation and is
10 incorporated hereto as if fully set forth herein.

11 9. On or about June 1, 2022, Biofourmis and Carenodes entered into a
12 further agreement entitled “Amendment 2” to the MSA, whereby Carenodes Services
13 to Biofourmis relating to the States of North Carolina, New York, and Florida were
14 to be transferred back to Biofourmis and no longer handled by Carenodes. A true and
15 correct copy of Amendment 2 was attached as Exhibit D to Carenodes’ Complaint in
16 this litigation and is incorporated hereto as if fully set forth herein.

17 10. On or around the same time, Biofourmis and Carenodes entered into
18 another modification, entitled “Amendment 3” to the MSA, whereby Carenodes was
19 to provide Services to Biofourmis relating to the State of New Mexico. A true and
20 correct copy of Amendment 3 was attached as Exhibit E to Carenodes’ Complaint in
21 this litigation and is incorporated hereto as if fully set forth herein.

22 11. Carenodes billed Biofourmis as if it had fully performed all of its
23 obligations under the MSA, SOW, and Amendments 1 through 3, and between April
24 and October 2022, Biofourmis paid Carenodes \$543,446.31.

25 12. Carenodes did not fulfill its obligations under the parties’ contracts.
26 Specifically, but not exhaustively:

- 27 a. Under the MSA, Carenodes failed to establish incentive, shared
28 savings, and mechanisms to augment Biofourmis’ revenue stream or

1 to develop a care pathway model based on episodes of care to
2 mitigate capitation risk at the primary care level;

3 b. Under the SOW, Carenodes failed to provide malpractice insurance;

4 c. Under Amendment 1, Carenodes failed to facilitate or create a single
5 contract in the states of California, Colorado, or Ohio; and

6 d. Under Amendment 3, Carenodes failed to provide any services in the
7 State of New Mexico.

8 13. As provided for in the MSA, Biofourmis sent a Notice of Termination
9 to Carenodes on or around December 5, 2022, notifying Carenodes of its material
10 breaches and of Biofourmis' intention to terminate the parties' MSA for cause or, in
11 the alternative, for convenience, pursuant to the MSA's terms.

12 14. On or around December 8, 2022, Careformis' owner, Alex Yarijanian,
13 acknowledged the termination in writing and represented that Carenodes would not
14 bill Biofourmis further.

15 15. On or around December 16, Yarijanian sent a response letter, but did
16 not cure the breaches identified by Biofourmis.

17 16. Biofourmis responded to Carenodes' "Response to Notice of
18 Termination" in a detailed letter dated January 5, 2023 and reiterated the termination
19 of the MSA. The termination was effective January 6, 2023.

20 17. Biofourmis transitioned all of the services previously provided by
21 Carenodes to entities that were controlled by, and whose Medical Directors were,
22 Biofourmis' Chief Medical Officer, Dr. Maulik Majmudar.

23 **CAUSES OF ACTION**

24 **FIRST CAUSE OF ACTION**

25 **Breach of Written Contract**

26 18. Counterclaimant incorporates all preceding allegations as if set forth
27 herein.

28 19. Biofourmis entered into the MSA, the SOW and Amendments 1, 2 and

1 3 with Carenodes.

2 20. As previously alleged, Carenodes breached its obligations under these
3 written agreements.

4 21. Biofourmis either performed all of its obligations under these
5 agreements or was excused or prevented from performing them.

6 22. As a result of Carenodes' breaches, Biofourmis has sustained damages
7 in an amount to be determined at trial, in excess of \$200,000 in actual damages, plus
8 costs, interest and attorneys' fees.

9 **SECOND CAUSE OF ACTION**

10 **Breach of the Implied Covenant of Good Faith & Fair Dealing**

11 23. Counterclaimant incorporates all preceding allegations as if set forth
12 herein.

13 24. Biofourmis entered into the MSA, the SOW and Amendments 1, 2 and
14 3 with Carenodes whereby Carenodes promised to provide services in various States.

15 25. The agreements, as all contracts, contained an implied covenant of good
16 faith and fair dealing.

17 26. Carenodes subsequently breached this implied covenant by billing and
18 invoicing Biofourmis for services that it had not provided and/or could not provide.

19 27. Carenodes also breached the implied covenant by purporting to
20 cooperate in Biofourmis' transition away from Carenodes' services under the MSA,
21 when in fact Carenodes intended to later assert that it had continued to provide
22 services.

23 28. As a result of Carenodes' breach of the implied covenant, Biofourmis
24 has suffered damages in an amount to be determined at trial, plus costs, interest and
25 attorneys' fees.

26 **PRAYER FOR RELIEF**

27 Biofourmis prays for judgment and relief on its counterclaim against
28 Carenodes as follows:

1. Monetary damages in an amount to be determined at trial, but no less than \$200,000;
2. An order awarding Biofourmis its costs of suit;
3. Pre- and post-judgment interest;
4. An award of its attorneys' fees; and
5. Such other relief as the Court may deem just and proper.

Dated: January 7, 2025

JORGENSEN, SIEGEL, MCCLURE &
FLEGEL LLP

By: /s/ Gregory K Klingsporn
Gregory K. Klingsporn

*Attorney for Defendants
BIOFOURMIS INC., BIOFOURMIS
CARE FL PLLC, and BIOFOURMIS
CARE NJ LLC*

DEMAND FOR JURY TRIAL

Biofourmis demands a trial by jury on each of its claims that are triable before a jury.

Dated: January 7, 2025

JORGENSEN, SIEGEL, MCCLURE &
FLEGEL LLP

By: /s/ Gregory K Klingsporn
Gregory K. Klingsporn

*Attorney for Defendants
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